In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-157

ASTOL CALERO-TOLEDO, SUPERINTENDENT OF POLICE, EDGAR R. BALZAC, ADMINISTRATOR OF THE GENERAL SERVICES ADMINISTRATION OF THE COMMONWEALTH OF PUERTO RICO,
APPELLANTS,

v.

PEARSON YACHT LEASING CO., A DIVISION OF GRUMMAN ALLIED INDUSTRIES, INC.,
APPELLEE.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

APPELLEE'S BRIEF

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Opinion Below

This is an appeal from the Memorandum Opinion and Order of the United States District Court for the District

of Puerto Rico, sitting as a three-judge court, entered on March 29, 1973. The opinion of the court below, at 363 F. Supp. 1337, is printed in the Record Appendix at pages 29-40. Judgment was entered on June 15, 1973 and is also printed in the Record Appendix at pages 44-45.

Jurisdiction

Jurisdiction of this Court to review the decision of the district court is not contested.

Constitutional Amendments and Statutes Involved

The Fourth and Fifth Amendment of the United States Constitution, 24 LPRA Secs. 2512 (a) (4) and (b) (Supp. 1972) and 34 LPRA Secs. 1722 (a) to (e) are set forth in Appendix I hereto.

Questions Presented

1. Whether appellants are precluded from asserting on appeal defenses and points which were neither pleaded nor raised in the court below.
2. Whether seizure and forfeiture under state law of an innocent man's property without notice and prior hearing, and without judicial determination of culpability, is a violation of the due process requirement of the Constitution of the United States.
3. Whether forfeiture of property according to state law can constitutionally be upheld in the case where its owner is absolutely innocent and had no knowledge whatsoever that its property would be used in connection with an illegal activity.

Statement

This action was filed by Pearson Yacht Leasing Co., a division of Grumman Allied Industries Inc., hereinafter referred to as "Pearson", to seek redress for deprivation under color of state law, of rights secured by the Constitution of the United States. (R.A. p. 1-6) The purpose pursued was to recover possession of a vessel which had been leased to Donovan and Lorreta Olsen pursuant to a bareboat charter (R.A. p. 23-24, paragraph 7) and which had been seized by appellants some time before pursuant to the forfeiture provisions of the Controlled Substances Act of Puerto Rico, 24 LPRA Secs. 2102 to 2607. (R.A. p. 23). Since appellants had acted in accordance with State law, 24 LPRA Sec. 2512(a) (4) & (b) and 34 LPRA Sec. 1722, Appendix I, infra, injunctive as well as declaratory relief were requested.

A three-judge court was convened upon appellee's application (R.A. p. 20). Appellants had originally opposed said motion (R.A. p. 20) but after a hearing thereon (R.A. p. 21-22), withdrew their opposition and consented to the convening of such three-judge court. (R.A. p. 26 and p. 30).

Since the parties had stipulated those facts necessary for consideration of the constitutionality of the statutes, a hearing was held for the purpose of allowing the parties opportunity to present oral argument in support of their respective contentions. Upon conclusion of argument, the case was submitted to the consideration of the three-judge court.

The record is clear in that appellants did not contest below the substantiality of appellee's claim of its right to recover the yacht should it prevail. Nor did they bring to the district court's attention defenses, which they now claim should have been considered below. (Infra, p. ___, Argument: Part II). Now, they hope to defeat their own consent

to the district court's consideration of the constitutional issues by urging their consideration on appeal.

Because of the foregoing, appellee takes issue with appellants' assertion that "In effect, then Pearson sold the yacht to its 'lessee', retaining title until it had received full payment". (Appellants' Brief p. 4) This is a conclusionary statement which might have been drawn by the court below had it been timely raised.

Other than the above explanatory note no issue is taken with appellants' statement of chronological events below.

Argument

I. The Forfeiture Provision of the Controlled Substances Act of Puerto Rico Operates To Deprive Innocent Owners of Their Conveyances Without Due Process of Law and Without Compensation.

A. *Foreiture Without Culpability Constitutes A Taking Of Property Without Just Compensation.*

The Controlled Substances Act of Puerto Rico, 24 LPRA Secs. 2101-2607, provides that "All conveyances * * * which are used, or are intended for use * * * in proscribed transportation are "subject to forfeiture". 24 LPRA Sec. 2512 (a) (4). The statute incorporates the procedure established by the Uniform Vehicle, Mount, Vessel and Plane Seizure Act, 34 LPRA Secs. 1721 and 1722. 24 LPRA Sec. 2512(b). Neither of said statutes requires any proof or finding of culpability on the part of the owner of the forfeited property, nor is any provision made for compensation.

This Honorable Court in *United States* v. *United States Coin And Currency*, 401 U.S. 715 (1971) said:

> "When the forfeiture statutes are viewed in their entirety, it is manifest that they are intended to impose a penalty only upon those who are significantly involved in a criminal enterprise." 401 U.S. at 721-722.

That such intention is required to meet constitutional norms is manifest from the earlier statement in the same opinion " * * * this Court in the past has recognized the difficulty of reconciling the broad scope of traditional forfeiture doctrine with the requirements of the Fifth Amendment." 401 U.S. at 721.

In *United States* v. *United States Coin And Currency*, supra, the issue was not directly resolved due to " * * * the terms of the other statutes which regulate forfeiture proceedings", 401 U.S. at 721, and which provided for return of seized property to innocent petitioners. No such saving provision is included in the pertinent statutes of Puerto Rico.

The statutes here in question are facially unlimited. The only exceptions to their broad sweep have been judicially engrafted to protect the owner of property unlawfully deprived of its possession, *Ochoteco* v. *Superior Court*, 88 P.R. 500 (1963), and the owners of property used as a common carrier, *Metro Taxi Cabs, Inc.* v. *Treasurer*, 73 P.R.R. 164 (1952).[1] The innocent lessor of property used in proscribed activities, such as appellee herein, is subjected to the forfeiture provisions by express mandate of the highest judicial authority of Puerto Rico. *Commonwealth* v. *Superior Court*, 94 P.R.R. 687 (1967). The lack of significant involvement in a criminal enterprise is irrelevant in the forfeiture procedure of Puerto Rico, as interpreted and applied.

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[1] These are the same exceptions included in the analogous federal statute. 21 USC Sec. 881(a) and (b).

In an effort to validate an apparently unconstitutional standard, appellants offer the hope of a limiting interpretation by the Supreme Court of Puerto Rico. In view of the legislative and judicial history of the statutes in question, such hope is not justified. The Uniform Vehicle, Mount, Vessel and Plane Seizure Act was enacted in Puerto Rico as Act No. 39 of June 4, 1960. 34 LPRA Secs. 1721 and 1722. This statute provides the procedural mechanism for forfeiture. In *Commonwealth* v. *Superior Court*, supra, the dissent questioned the constitutionality of that procedure. 94 P.R.R. at 695-773. On April 5, 1971, this Court rendered its decision in *United States* v. *United States Coin And Currency*, supra. Nevertheless, on June 21, 1971, the legislature of Puerto Rico enacted the Controlled Substances Act, 24 LPRA Secs. 2101-2607, and specifically incorporated the pre-existing procedure. As in the case of re-enactment or adoption of a statute, that incorporation is presumed to have included the prior judicial interpretations of the statute. *Vazquez* v. *Font*, 53 P.R.R. 252, 255 (1938); *Legarreta* v. *Treasurer*, 55 P.R.R. 20, 23 (1939). The legislature thus manifested its intent to include in the sweep of the statute the property of innocent lessor-owners. It is presumptuous to anticipate that the Supreme Court of Puerto Rico will now not only overrule its own decision, but will nullify the legislature's ratification of an authoritative interpretation of its intent. The constitutional protection of appellee, an admittedly innocent party, should not depend upon so tenuous a possibility.

Appellant's suggestion that the district court "elected not to abstain" in this case, Appellant's Brief at pp. 19-20, misinterprets the record. As indicated below, appellants consented to the convening of a three-judge court, R.A. 26, and did not invoke the doctrine of abstention as a defense in their answer, R.A. 27-29. Abstention would have been improper in the circumstances since the statutes in question

had already been authoritatively interpreted by the highest judicial authority of the Commonwealth. *Wisconsin* v. *Constantineau,* 400 U.S. 433 (1970); *Fornaris* v. *Ridge Tool Co.,* 400 U.S. 41 (1970); *Harman* v. *Forsseneius,* 380 U.S. 528 (1964); *Railroad Commission of Texas* v. *Pullman,* 312 U.S. 496 (1941). Even had the defense of abstention been raised below, appellee could not be forced to litigate federal constitutional issues in the Commonwealth courts. *England* v. *Louisiana State Board of Medical Examiners,* 375 U.S. 411 (1964).

The district court was bound by the interpretation of the statutes by the highest Commonwealth court. Since the statutes as so interpreted do not meet federal constitutional norms, there was no alternative to the invalidation of those statutes.

B. *Seizure Without Prior Hearing Is A Violation Of Due Process.*

In their effort to cure an additional infirmity of the statutes in question, appellants are forced to tortured interpretation both of the statutes and of decisions of this Court. Relying on *Downs* v. *Porrato,* 76 P.R.R. 572 (1954), appellants start with the premise that the "seizure" does not become a "forfeiture" until after a hearing, and then continue with the premise that there can be no "deprivation" until there is a "forfeiture". Thus they reach the conclusion that no hearing is required prior to seizure.

Downs v. *Porrato,* supra, rested on an interpretation of an analogous statute[2] at variance with the interpretation given to the statutes in question here by the same Supreme Court of Puerto Rico. In *Downs* it was said:

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[2] Weapons Act of Puerto Rico, as amended by Act No. 397 of May 10, 1951.

> "In the second case (that of a lawful instrument employed in unlawful pursuits) the confiscation has to be made by judicial declaration after proving (1) the unlawful use of a thing and (2) the knowledge of the interested parties of such unlawful use. The title does not pass to the State or to the person who acquires it in the judicial sale until there is a judicial declaration and the public auction has been accomplished." 76 P.R.R. at 578-579.

That statute, unlike the act here under consideration, permitted the defense of innocence of interested parties. The hearing in such case is meaningful. *Armstrong* v. *Monzo*, 380 U.S. 545 (1965); *Fuentes* v. *Shevin*, 407 U.S. 67 (1972). The district court in this case noted as "most compelling • • • the fact that under the statutory scheme, the available procedure precludes plaintiff from challenging the forfeiture in the state courts." R.A. 31-32. The reason given by the court below is the fact that appellee was time barred. R.A. 32, n. 4. An equally valid reason, as noted above, is that appellee's innocence would not constitute a defense as the statute has been interpreted and applied by the state courts.

Appellants also give an interpretation to the term "deprivation" different from that given by this Court. The argument is embodied in the statement:

> "And it is therefore impossible for the *seizure* of the yacht to have violated Pearson's rights under the due process clause."
>
> Appellants' Brief, p. 11. (emphasis in original).

The contention is that the district court's finding of deprivation from the date of seizure is erroneous. Appellants' Brief, P. 10. This contention is based on an interpretation

of "deprivation" as equivalent to "permanent taking". That interpretation was specifically rejected in *Fuentes* v. *Shevin*, supra.

> "While the length and consequent severity of a deprivation may be another factor to weigh in determining the appropriate form of hearing, it is not decisive of the basic right to a prior hearing of some kind." 407 U.S. at .

The possibility of recovery through a post-seizure hearing has not saved similar procedures in cases before this Court. *Fuentes* v. *Shevin*, 407 U.S. 67 (1972); *Goldberg* v. *Kelly*, 397 U.S. 254 (1970); *Armstrong* v. *Monzo*, 380 U.S. 545 (1965). Even that possibility did not exist here since appellee simply was accorded no defense to seizure and forfeiture.

The attempt to defend the statutory scheme by equating the seizure in the forfeiture proceeding to seizure under a search warrant is treated below. However, the suggestion that seizure without notice is essential to law enforcement requires analysis. As the court below pointed out, the seizure of the yacht in this case took place on July 11, 1972, while the act for which it was forfeited took place on May 6, 1972. R.A. p. 38. The relationship between the seizure and law enforcement is difficult to understand in these circumstances. This is not the case of a search and seizure immediately contemporaneous with an arrest, as in *Chambers* v. *Maroney*, 399 U.S. 42 (1970). As the Court stated the norm there:

> "For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate

search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment." 399 U.S. at 52.

In the case at bar, neither alternative was followed since the seizure was not incidental to a search based on probable cause for the purpose of uncovering evidence. The "exigent circumstances" which might serve as a sufficient authorization for a search based on the judgment of the police as to probable cause, *Chambers* v. *Maroney*, supra, 399 U.S. at 51, did not exist on July 11, 1972, when seizure was effected. The purpose of seizure here was solely for forfeiture at the time it was effected, and no law enforcement objective existed.

In neither *United States* v. *Troiano*, 365 F.2d 416 (3 Cir. 1966), *certiorari denied* 385 U.S. 958 (1966); nor in *Burge* v. *United States*, 342 U.S. 408 (9 Cir. 1965), *certiorari denied* 382 U.S. 829 (1965), cited by appellants, was the issue of seizure and forfeiture the point of decision. In both cases objection was raised to admission of the fruits of a search in the criminal trial of the defendant. In both cases the seizure was contemporaneous with the arrest. While it is true that in *Burge*, supra, the search occurred some seven days after the seizure, the Court of Appeals found the search reasonable since the vehicle was in the lawful custody of the United States from the time of seizure until the search. 342 F.2d at 414.

The issue here is whether the seizure was permissible. The probable cause requirement plays no part in that determination in the circumstances of this case since none of the justifying conditions for action without a warrant or other legal process existed. *Chambers* v. *Maroney*, supra, 399 U.S. at 51. Nor was this one of the truly unusual situations in which this Court has allowed outright seizure without opportunity for a prior hearing. *Fuentes* v. *Shevin*, supra, 407 U.S. at 90-92.

C. *Seizure Without Prior Determination Of Probable Cause Is Violative Of The Fourth Amendment.*

In their attempt to avoid the requirement of a prior hearing, appellants argue that the "probable cause" requirement of the Fourth Amendment is applicable to seizures in forfeiture proceedings. Appellants' Brief, p. 12. This contention was neither raised nor considered in the court below, and therefore should not be considered on appeal. Point II, infra. The factual record is insufficient to show that the Fourth Amendment standards which they contend are controlling were in fact met in this case by appellants. The burden is on those who seek exemption from the constitutional mandate to show that the exigencies of the situation made the course followed imperative. *McDonald* v. *United States,* 335 U.S. 451, 456 (1948).

The argument fails on this record. The reasoning is based on the assumption that once an officer of the law has "probable cause", arrest, seizure and search follow without more. That is not the rule as formulated by this Court.

Appellants have not met the standard which they now set for themselves. Assuming that the "probable cause" requirement for seizure is the same as for search, " • • • searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Katz* v. *United States,* 389 U.S. 347, 357 (1967). There is no suggestion of approval by a judge or magistrate in this case, and the statutes in question provide for none. The "high government official" (Appellants' Brief, p. 12) who authorized seizure was the Police Superintendent. R.A. 23. The procedure is fundamentally indistinguishable from that found constitutionally inadequate in *Coolidge* v. *New Hampshire,* 403 U.S. 443, 450 (1971).

A search without a warrant can be justified as an incident of an arrest, but such search can extend only to the arrestee's person and the area within his immediate control —construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence. *Chimel* v. *California*, 395 U.S. 752, 763 (1969). The justifications for the rule allowing contemporaneous searches are absent where the search is remote in time or place from the arrest. *Preston* v. *United States*, 376 U.S. 364, 367 (1964). The "plain view" doctrine which permits a warrantless seizure is limited to cases where it is immediately apparent to the police that they have evidence before them. The doctrine may not be used to extend a general exploratory search (and seizure) from one object to another until something incriminating at last emerges, and is grounded on an otherwise lawful search in progress. *Coolidge* v. *New Hampshire*, supra, 403 U.S. at 466-467. It is true that a search of a ship, motor boat, wagon, or automobile for contraband goods is permitted where it is not practicable to secure a warrant, because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought. *Carroll* v. *United States*, 267 U.S. 132, 153 (1925). However, the record here is barren of any indication of such purpose, and on the contrary, indicates the seizure was for the purpose of forfeiture alone.

This Court has recently reaffirmed the principle that no amount of probable cause can justify a warrantless search or seizure absent "exigent circumstances." *Coolidge* v. *New Hampshire*, supra, 403 U.S. at 468. Appellants argue that the "probable cause" doctrine is applicable to the present seizure. The burden is upon them to establish the exigent circumstances constituting an exception to the general principle. No effort to discharge that burden was made in the court below, appellants having rested there on the facial constitutionality of the statutes under consider-

ation. The statutes do not require, and the Supreme Court of Puerto Rico has not imposed, a requirement of probable cause as mandated by the Fourth Amendment. The determination by officers other than judges or magistrates, even if made, is constitutionally inadequate. Under the interpretation most favorable to them, appellants cannot legalize the present seizure. Since this seizure is permitted by statute, the statutes are overly broad and invalid.[3]

The result is the same whether the Fourth Amendment or the Fifth Amendment is applied, and the holding of the court below was correct.

II. There Is No Evidence On The Record Upon Which To Consider On Appeal Defenses Not Raised Below.

Appellants assert on appeal certain defenses and issues which were never pleaded or raised in the court below. Error is charged by them on the grounds that the district court should have considered such defenses and issues in order to avoid reaching the constitutional issues. The matters now asserted are:

(a) That the "probable cause" requirement of the Fourth Amendment rather than the prior hearing requirement of the due process clause is applicable to seizures in forfeiture proceedings: (Appellants' Brief, p. 12).

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[3] The record of this case, contrary to appellants' footnote 4 at page 12 of their brief, establishes only that the lessee of the seized yacht was accused of using the yacht some two months prior to seizure for conveying, transporting, carrying and transferring a narcotic drug known as "marijuana". R.A. 25. There is no evidence on the record of such use, or any other unlawful use on the date of seizure which would justify a finding of probable cause. The marihuana was discovered on the yacht on May 6, 1972, and the record discloses no violation other than possession. Appellants' Brief, p. 4.

(b) That Pearson lacked "standing" to complain because under Section 1722 it is time barred. (Appellants' Brief, p. 14-15).

(c) That Pearson suffered no injury or loss which must be compensated. (Appellants' Brief, p. 20).

(d) That Pearson has suffered no loss because there might be hull insurance covering the loss. (Appellants' Brief, p. 20).

(e) That Pearson is limited to seeking only those remedies afforded under contract. (Appellants' Brief, p. 21).

(f) That Pearson's loss was due to its negligence in failing to register its title with the Ports Authority of Puerto Rico. (Appellants' Brief, p. 21).

Except for the first point listed, which involves a question of law and is discussed in Part I (C) of appellee's Argument, supra, p. 11, 12; the matters involved depend on facts and circumstances not before this Court. No presentation was made or attempted of those facts in the court below. This absence of facts and evidence necessary for judicial adjudication of the issues is due solely and exclusively to appellants' failure to timely raise the points and make such offer of proof as may have been required. This failure prevented the district court from considering the points now urged on appeal and from making adequate findings of fact and conclusions based thereon, so essential to their consideration on appeal. The record on appeal, therefore, lacks the elements needed by this Court in order to examine the error alleged, particularly those in

parts II (A) and (D) of appellants' argument. Appellants Brief pp. 14-15 and 20-22.

Sufficient opportunity existed below to preserve those matters for appeal by means of an adequate record. Appellants do not contend having been denied that opportunity. Neither do they claim to have been prevented from presenting those points by arbitrary, capricious or improper conduct of the trial judges. The record only discloses that the points and issues were simply not raised below nor relied on.

The assertions of these defenses for the first time on appeal comes as a complete surprise to appellee. Assuming, *arguendo*, their merit; at this stage, it is not possible for this Court to adjudicate those issues without a full evidentiary hearing in which evidence may be adduced by the parties in support of their respective contentions. Appellants' argument takes for granted, by assumption naturally, that the record includes the evidence and findings and conclusion of a trial court necessary for consideration of the point urged on appeal. It would indeed be disadvantageous to the appellee if this court were to consider those points, without affording an opportunity to explain or rebut by proof or otherwise, such things as the fact that an injury and loss occurred, that hull insurance does not cover forfeitures, that no adequate contractual remedy exists, especially since the primary security was the vessel itself, or that the failure to register was not negligence in this case because of the customs and usages of maritime commerce of not registering bareboat charters such as this one. Trial by argument on appeal is not a substitute for trial on the merits in the fact finding tribunal.

This Court, in *Hormel* v. *Helvering*, 312 U.S. 552, (1941),

expressed the rule as to review of issues not raised below:

> "Ordinarily an appellate court does not give consideration to issues not raised below. For our procedural scheme contemplates that parties shall come to issue in the trial forum vested with authority to determine questions of fact. This is essential in order that parties may have the opportunity to offer all evidence they believe relevant to the issues which the trial tribunal is alone competent to decide; it is equally essential in order that litigants may not be surprised on appeal by final decisions there of issues upon which they have had no opportunity to introduce evidence". 312 U.S. at 556.

This rule has been subsequently applied in *United States* v. *New York Telephone Co.*, 326 U.S. 638, 650-651, n. 18 (1946); *Estate of Donelly*, 397 U.S. 286, 295, n. 5 (1970).

The principle is of even greater applicability in a case such as this where governmental action has deprived an individual of property whose value has been stipulated to be $19,800. The reasonableness, if any, of appellants' action depends on the facts, and it was precisely the position adopted by appellants in the fact finding forum that precluded introduction of evidence and findings of fact on which to base their untimely arguments here.

Appellants may not now blame the district court for their own failure.

Conclusion

The constitutionality of the statutes involved was correctly decided by the district court according to the principles underlying the decisions of *United States* v. *United*

States Coin and Currency, supra, and *Fuentes* v. *Shevin,* supra. The decision of the court below should, therefore, be affirmed.

Respectfully submitted,

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APPENDIX I

United States Constitution

AMENDMENT IV—SEARCHES AND SEIZURES

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V—CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS; JUST COMPENSATION FOR PROPERTY

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

24 L.P.R.A. § 2512. Forfeitures

(a) The following shall be subject to forfeiture to the Commonwealth of Puerto Rico:

> (4) All conveyances, including aircraft, vehicles, mount or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in clauses (1) and (2) of this subsection;

(b) Any property subject to forfeiture under clause (4) of subsection (a) of this section shall be seized by process issued pursuant to Act No. 39, of June 4, 1960, as amended, known as the Uniform Vehicle, Mount, Vessel and Plane Seizure Act, sections 1721 and 1722 of Title 34.

34 L.P.R.A. § 1721. Short title

This chapter shall be known as the "Uniform Vehicle, Mount, Vessel and Plane Seizure Act."—June 4, 1960, No. 39, p. 66, § 1, eff. June 4, 1960.

§ 1722. Procedure

Whenever any vehicle, mount, or other vessel or plane is seized pursuant to the provisions of Act No. 6 of June 30, 1936, Act No. 220 of May 15, 1948, Act No. 17 of January 19, 1951, Act No. 48 of June 18, 1959 and/or Act No. 2 of January 20, 1956, such seizure shall be conducted as follows:

(a) The proceedings shall be begun by the seizure of the property by the Secretary of Justice, the Secretary of the Treasury or the Police Superintendent, through their delegates, policemen or other peace officers. The officer under whose authority the action is taken shall serve notice on the owner of the property seized or the person in charge thereof or any person having any known right or interest therein, of the seizure and of the appraisal of the properties so seized, said notice to be served in an authentic manner, within ten (10) days following such seizure and such notice shall be understood to have been served upon the mailing thereof with return receipt requested. The owners, persons in charge, and other persons having a known interest in the property so seized may challenge the confiscation within the fifteen (15) days following the service of the notice on them, through a complaint against the officer under whose authority the confiscation has been made, on

whom notice shall be served, and which complaint shall be filed in the Part of the Superior Court corresponding to the place where the seizure was made and shall be heard without subjection to docket. All questions that may arise shall be decided and all other proceedings shall be conducted as in an ordinary civil action. Against the judgment entered no remedy shall lie other than a certiorari before the Supreme Court, limited to issues of law. The filing of such complaint within the period herein established shall be considered a jurisdictional prerequisite for the availing of the action herein authorized.

(b) Every vehicle, mount, or any vessel or plane so seized shall be appraised as soon as taken possession of by the officer under whose authority the seizure took place, or by his delegate, with the exception of motor vehicles, which shall be placed under the custody of the Office of Transportation of the Commonwealth of Puerto Rico, which shall appraise same immediately upon receipt thereof.

In the event of a judicial challenge of the seizure, the court shall, upon request of the plaintiff and after hearing the parties, determine the reasonableness of the appraisal as an incident of the challenge.

Within ten (10) days after the filing of the challenge, the plaintiff shall have the right to give bond in favor of the Commonwealth of Puerto Rico before the pertinent court's clerk to the satisfaction of the court, for the amount of the assessed value of the seized property, which bond may be in legal tender, by certified check, hypothecary debentures, or by insurance companies. Upon the acceptance of the bond, the court shall direct that the property be returned to the owner thereof. In such case, the provisions of the following paragraphs (c), (d) and (e) shall not apply.

When bond is accepted the subsequent substitution of

the seized property in lieu of the bond shall not be permitted, said bond to answer for the seizure if the lawfulness of the latter is upheld, and the court shall provide in the resolution issued to that effect, for the summary forfeiture execution of said bond by the clerk of the court and for the covering of such bond into the general funds of the Government of Puerto Rico in case it may be in legal tender or by certified check; the hypothecary debentures or debentures of insurance companies shall be transmitted by the pertinent clerk of the court to the Secretary of Justice for execution.

(c) After fifteen (15) days have elapsed since service of notice of the seizure without the person or persons with interest in the property seized have filed the corresponding challenge, or after twenty-five (25) days have elapsed since service of notice of the seizure without the court's having directed that the seized property be returned on account of the bond to that effect having been given, the officer under whose authority the seizure took place, the delegate thereof, or the Office of Transportation, as the case may be, may provide for the sale at auction of the seized property, or may set the same aside for official use of the Government of Puerto Rico. In case the seized property cannot be sold at auction or set aside for official use of the Government, the property may be destroyed by the officer in charge, setting forth in a minute which he shall draw up for the purpose, the description of the property, the reasons for its destruction and the date and place where it is destroyed, and he shall serve notice with a copy thereof on the Secretary of Justice.

(d) In case the vehicle, mount, or vessel or plane is sold at auction, the proceeds from the sale shall be covered into the general fund of the Government of Puerto Rico, after deducting and reimbursing expenses incurred.

(e) If the seizure is judicially challenged and the court

declares same illegal, the Secretary of the Treasury of Puerto Rico shall, upon presentation of a certified copy of the final decision or judgment of the court, pay to the challenger the amount of the appraisal or the proceeds from the public auction sale of such property, whichever sum is the highest, plus interest thereon at the rate of 6% per annum, counting from the date of the seizure.—June 4, 1960, No. 39, p. 66, § 2; Sept. 1, 1961, No. 10, p. 348, § 1, eff. Sept. 1, 1961.